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BY HAND DELIVERY
Susan H. Kuhbach
Senior Office Director for Import Administration
Attention: Import Administration
U.S. Department of Commerce
Central Records Unit, Room 1870
14th Street and Constitution Avenue, N.W.
Washington, D.C. 20230

Re: Application of the Countervailing Duty Law to Imports from the People's Republic of China: Request for Comment

Dear Ms. Kuhbach:

On behalf of United States Steel Corporation, we hereby respond to the Department's December 15, 2006 notice requesting comments on whether it should apply the countervailing duty ("CVD") law to imports from the People's Republic of China ("China").[1] The Department issued the request for comments in connection with its initiation of a CVD investigation of imports of coated free sheet

1 See Application of the Countervailing Duty Law to Imports from the People's Republic of China, 71 Fed. Reg. 75507 (Dep't Commerce Dec. 15, 2006) (request for comments) ("Request for Comments").

paper from China.[2] Given the importance of this matter beyond the context of the coated free sheet paper case and the complex issues involved, the Department has solicited comments from the public.[3]

The issue of whether the CVD law should be applied to imports from China is of crucial importance to the steel industry, as it is to many industries in the United States. In recent years, there has been an enormous build-up of steel capacity in China. Crude steel production in China has surged from 222.4 million metric tons ("MT") in 2003 to an estimated 418.5 million MT in 2006.[4] This increase of 196.1 million MT is roughly twice the total steel production in the United States.[5] Not only is China's steel production growing rampantly, but the country's demand for steel is simply not keeping pace with production. China has gone from a net importer of steel products to a substantial net exporter of such products in a matter of only a few years. Many of these exports are headed for the United States and are currently

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2 See id. at 75507.

3 See id.

4 World Steel Dynamics, "Inside Track #66" (Oct. 27, 2006) at 6.

5 In 2005, total crude steel production in the United States was 94.9 million MT. See International Iron and Steel Institute, World Steel in Figures 2006 at 3 (2006).

flooding the U.S. market. Indeed, based on the most recent import data available, China was on pace to ship over 5.3 million net tons of finished steel products to the United States during 2006, an increase of over 130% from 2005 volumes.[6]

The growth in China's steel industry is being fueled by mammoth government subsidies. Such subsidies have taken many different forms, including debt-to-equity swaps, government grants and tax subsidies to state-owned enterprises operating at a loss, preferential loans and directed credit from state-owned banks, and assistance with energy, raw material, and other input costs. Detailed information regarding these subsidies can be found in a July 2006 report issued by the American Iron and Steel Institute ("AISI") and other steel organizations[7] as well as a September 18, 2006 submission by AISI regarding China's failure to comply with its World Trade Organization ("WTO") obligations.[8] The detailed information provided therein constitutes strong evidence that China is the largest subsidizer in the world.

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6 American Iron and Steel Institute News Release, "Asia Continues to Send Record Level of Steel Imports to U.S. Shores" (Dec. 27, 2006) at 2.

7 See "The China Syndrome: How Subsidies and Government Intervention Created the World's Largest Steel Industry" (Report Prepared for AISI, the Steel Manufacturers Association, the Specialty Steel Industry of North America, and the Committee on Pipe and Tube Imports) (July 2006).

8 See Letter from AISI to Gloria Blue, Executive Secretary of the Trade Policy Staff Committee (Sept. 18, 2006) at 6-15.

The application of the CVD law to China is essential for the United States to avail itself of all of the legal rights and remedies available to it to protect its companies, workers, and communities from the onslaught of heavily subsidized imports from China. As demonstrated below, the Department should now apply the CVD law to imports from China for the following reasons:

- The previous decisions of the Department and the U.S. courts on this issue pose no impediment to the Department applying the CVD law to non-market economy ("NME") countries like China;
- The fundamental change in the definition of what constitutes a subsidy provided in the Uruguay Round Agreements mandates a change in the Department's previous policy of not applying the CVD law to China and other NME countries;
- The terms of China's accession to the WTO clearly provide for WTO Members like the United States to apply the CVD law to China;
- China may have the CVD law applied to it while continuing to be treated as an NME country for purposes of the U.S. antidumping law; and
- The practical concerns expressed by some regarding the application of the CVD law to China do not provide any basis for refusing to apply such relief.

Each of these points is addressed in turn below.

I. The Previous Decisions of the Department and the Courts Pose No Impediment to the Department Applying the CVD Law to NME Countries Like China

The Department first adopted its policy with respect to the application of the CVD law to NME countries like China back in 1984. An understanding of the basis for the Department's policy and the decisions of the courts with respect thereto is critical to determine whether the Department may now apply the CVD law to China. As demonstrated below, neither the Department's original policy decision nor the decision of the U.S. Court of Appeals for the Federal Circuit upholding it preclude the Department from now applying the CVD law to China.

The Department first decided the issue of whether the CVD law should be applied to NME countries in the investigations of Carbon Steel Wire Rod from Czechoslovakia and Carbon Steel Wire Rod from Poland (collectively the "Wire Rod cases").[9] In the Wire Rod cases, the Department considered the meaning of "bounty or grant" as used in the then-existing statute (i.e., Section 303 of the

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9 See Carbon Steel Wire Rod from Czechoslovakia, 49 Fed. Reg. 19370 (Dep't Commerce May 1, 1984) (final negative determ.) ("Wire Rod from Czechoslovakia"); Carbon Steel Wire Rod from Poland, 49 Fed. Reg. 19374 (Dep't Commerce May 7, 1984) (final negative determ.) ("Wire Rod from Poland").

Tariff Act of 1930, as amended (the "Act")) and determined that bounties or grants could not be found in NME countries.[10]

Specifically, the Department stated that "{w}e believe a subsidy (or bounty or grant) is definitionally any action that distorts or subverts the market process and results in a misallocation of resources, encouraging inefficient production and lessening world wealth."[11] In order to determine whether a subsidy had been conferred under Section 303 of the Act, the Department made clear that "'*it is the economic result* of the foreign government's action *which controls*.'"[12] Based on its finding that subsidies would not have any economic result in NME countries, such as through effects on the recipients' output, the Department determined that subsidies

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10 Wire Rod from Czechoslovakia, 49 Fed. Reg. at 19371; Wire Rod from Poland, 49 Fed. Reg. at 19375.

11 Wire Rod from Czechoslovakia, 49 Fed. Reg. at 19371; Wire Rod from Poland, 49 Fed. Reg. at 19375.

12 Wire Rod from Czechoslovakia, 49 Fed. Reg. at 19372 (quoting United States v. Zenith Radio Corp., 562 F.2d 1209, 1216 (Fed. Cir. 1977), aff'd, 437 U.S. 443 (1978) ("Zenith")) (emphasis supplied by the Department); Wire Rod from Poland, 49 Fed. Reg. at 19376 (same) (emphasis supplied by the Department).

simply could not be identified and quantified in such countries.[13] The Department therefore concluded that the CVD law did not apply to NME countries.

Not long after its decisions in the Wire Rod cases, the Department rescinded its initiation of two other CVD investigations involving NME countries.[14] Specifically, the Department rescinded its initiation of these investigations based on its previous policy decision in the Wire Rod cases that subsidies could not be found in NME countries and, therefore, that the CVD law should not be applied against imports from such countries.[15]

The Department's policy decision not to apply the CVD law to NME countries was subsequently challenged at the U.S. Court of International Trade (the "CIT") and overturned.[16] Nevertheless, the U.S. Court of Appeals for the Federal

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13 Wire Rod from Czechoslovakia, 49 Fed. Reg. at 19372; Wire Rod from Poland, 49 Fed. Reg. at 19376.

14 See Potassium Chloride from the German Democratic Republic, 49 Fed. Reg. 23428 (Dep't Commerce June 6, 1984) (rescission of initiation of investigation and dismissal of petition); Potassium Chloride from the Soviet Union, 49 Fed. Reg. 23428 (Dep't Commerce June 6, 1984) (rescission of initiation of investigation and dismissal of petition).

15 See id.

16 See Continental Steel Corp. v. United States, 614 F. Supp. 548, 557 (Ct. Int'l Trade 1985).

Circuit reversed the CIT's decision and upheld the original determination of the Department in Georgetown Steel Corp. v. United States ("Georgetown Steel").[17] In its decision in Georgetown Steel, the Federal Circuit found that Congress had not defined the terms "bounty" and "grant" in Section 303 of the Act and that the statute was, therefore, ambiguous on the issue of whether the CVD law could be applied to NME countries.[18] Given this ambiguity, the Federal Circuit deferred to the Department's interpretation of the statute, holding that it could not say that the Department's determination that subsidies could not be found in an NME country was "unreasonable, not in accordance with law or an abuse of discretion."[19]

In the years following the Federal Circuit's decision in Georgetown Steel, the Department has simply relied on its previous policy decision in determining that it would not apply the CVD law to imports from NME countries in the few cases that have been brought before it.[20] In fact, until the November 20, 2006

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17 Georgetown Steel, 801 F.2d 1308, 1318 (Fed. Cir. 1986).

18 Id. at 1314.

19 Id. at 1318.

20 See Issues and Decision Memorandum in Sulfanilic Acid from Hungary, 67 Fed. Reg. 60223 (Dep't Commerce Sept. 25, 2002) (final determ.) at Comment 1; Oscillating and Ceiling Fans from the People's Republic of China, 57 (continued...)

initiation of the investigation of coated free sheet paper from China, there had been no CVD investigations involving China since 1992.[21]

The recent initiation of the CVD investigation of coated free sheet paper presents the Department with an opportunity to reconsider its policy of not applying the CVD law to NME countries like China. Clearly, the Department's policy is not required either by the Federal Circuit's decision in Georgetown Steel or by the statute. In Georgetown Steel, the Federal Circuit simply held that the Department's policy represented a permissible interpretation of an ambiguous statute. In fact, the Department itself has recognized that Georgetown Steel merely upheld the Department's interpretation of the statute in effect at the time and that there is no legal bar against applying the CVD law to NME countries.[22]

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20 (...continued)
Fed. Reg. 24018 (Dep't Commerce June 5, 1992) (final negative determ.); Chrome-Plated Lug Nuts and Wheel Locks from the People's Republic of China, 57 Fed. Reg. 10459 (Dep't Commerce Mar. 26, 1992) (rescission of initiation of investigation and dismissal of petition).

21 See Request for Comments, 71 Fed. Reg. at 75507.

22 See U.S.-China Trade: Commerce Faces Practical and Legal Challenges in Applying Countervailing Duties, GAO-05-474 (June 2005) ("GAO Report on China CVD Issue") at 44 (DOC Response to Draft GAO Report); Request for Comments, 71 Fed. Reg. at 75507.

Nor is the Department barred from departing from its policy and from applying the CVD law to NME countries simply because it adopted a different interpretation of a different statute more than 20 years ago. As the CIT has recognized, "it is well-established that Commerce may depart from a prior practice so long as it provides a 'reasoned analysis' for its change."[23] As demonstrated below, there is more than ample basis for a change in the Department's policy. Indeed, it is clear that the Department's policy should be changed and that the Department should now apply the CVD law to NME countries like China in light of the dramatic changes that have occurred since that policy was first adopted.

II. The Legal Landscape Has Changed Significantly Since the Department First Decided Not to Apply the CVD Law to NME Countries Like China

In the more than 20 years since the Department first made its policy decision not to apply the CVD law to NME countries, much has changed. In particular, there has been a fundamental change in the definition of what constitutes a subsidy that, on its own, mandates a change in the Department's policy. Moreover,

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[23] Allegheny Ludlum Corp. v. United States, 112 F. Supp. 2d 1141, 1147 (Ct. Int'l Trade 2000); see also Rust v. Sullivan, 500 U.S. 173, 186-187 (1991) (upholding change in agency's interpretation where it was amply justified with a "reasoned analysis" and stating that an agency must consider the wisdom of its policy on a continuing basis).

the terms of China's accession to the WTO in 2001 clearly provide for WTO Members like the United States to apply the CVD law to China. Based on these dramatic changes in the legal landscape, there should be no question that the time has come for the CVD law to be applied to China.

A. The New Definition of a Subsidy Provided in the Uruguay Round Agreements Mandates a Change in the Department's Policy

Since the Department originally adopted its policy in 1984 of not applying the CVD law to NME countries, an explicit and expansive definition of what constitutes a subsidy has been developed for the first time. This development alone mandates a change in the Department's policy so as to apply the CVD law to NME countries like China.

In 1994, the United States enacted the Uruguay Round Agreements Act ("URAA") and thereby implemented the agreements reached as a result of the Uruguay Round negotiations, including the Subsidies and Countervailing Measures ("SCM") Agreement. While the prior Tokyo Round Subsidies Code and the General Agreement on Tariffs and Trade provided rules for subsidies discipline and the application of countervailing duties, they did not provide a definition of a subsidy. The same was true of the applicable U.S. statute at the time – i.e., Section 303 of the

Act.[24] Thus, at the time that the Department adopted its policy not to apply the CVD law to NME countries in 1984, there was no definition of what constituted a subsidy. As a result, the Department was left to define what constituted a subsidy in terms of the effects that it had and the distortions that it produced in the market.

This all changed with the adoption of the SCM Agreement. The SCM Agreement provided, for the first time, an explicit and expansive definition of what constitutes a subsidy. Specifically, it provides that a subsidy shall be deemed to exist where (i) there is a financial contribution by a government or other public body or there is any form of income or price support and (ii) a benefit is conferred thereby.[25] Such subsidies are countervailable or actionable under the SCM Agreement where they are provided to a specific enterprise or industry or group of enterprises or industries.[26] This new definition of what constitutes a subsidy was implemented in U.S. law pursuant to Sections 771(5)(B) and 771(5A) of the Act.[27]

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24 See Georgetown Steel, 801 F.2d at 1314; Zenith, 562 F.2d at 1216-17.

25 See SCM Agreement at Art. 1.1.

26 See id. at Art. 2.

27 See 19 U.S.C. §§ 1677(5)(B), (5A) (2004).

In other words, the relevant provisions of the SCM Agreement and U.S. law now define a subsidy based on what it is, rather than what it does. Accordingly, it is not necessary to examine the economic effects of a subsidy in order to determine whether it is, in fact, a subsidy.

To the contrary, under current U.S. law, the Department is not permitted to consider the effects of a subsidy in determining whether it is a subsidy and is countervailable. Indeed, Section 771(5)(C) of the Act specifically provides for the Department not to consider the effects of the subsidy in determining whether a subsidy exists.[28]

Similarly, Section 351.503(c) of the Department's regulations implementing the URAA provides that in determining whether a benefit is conferred by a subsidy, the Department is not to consider the effect of the government action on the recipient firm's performance, including its prices and output, or how the firm's behavior otherwise is altered.[29] As the Department stated in the Preamble to its countervailing duty regulations,

> if there is a financial contribution and a firm pays less for an input than it otherwise would pay in the absence of that financial contribu-

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28 19 U.S.C. § 1677(5)(C) (2004).

29 19 C.F.R. § 351.503(c) (2006).

> tion (or receives revenues beyond the amount it otherwise would earn), that is the end of the inquiry insofar as the benefit element is concerned. The Department need not consider how a firm's behavior is altered when it receives a financial contribution that lowers its input costs or increases its revenues.[30]

In other words, the Department has recognized that "the law is concerned with the benefit originally received, not with what the recipient does with it."[31]

In practice, the Department has determined that "{b}ecause neither the statute nor the Department's regulations permit an analysis of the use and effect of subsidies, the Department does not attempt such an analysis."[32] In fact, the Department has clearly and unequivocally stated that it "does not consider the effects of a countervailable subsidy in determining whether the subsidy exists . . . ."[33]

Based on the foregoing, the effects of a subsidy are now clearly irrelevant to the CVD analysis under the new definition of what constitutes a subsidy.

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30 Countervailing Duties, 63 Fed. Reg. 65348, 65361 (Dep't Commerce Nov. 25, 1998) (final rule) ("Final Rule").

31 Id. at 65354.

32 Industrial Phosphoric Acid from Israel, 64 Fed. Reg. 2879, 2885 (Dep't Commerce Jan. 19, 1999) (final results).

33 Issues and Decision Memorandum in Certain Hot-Rolled Carbon Steel Flat Products from India, 66 Fed. Reg. 49635 (Dep't Commerce Sept. 28, 2001) (final determ.) at Comment 14.

Neither the SCM Agreement nor the U.S. statute nor the Department's implementing regulations provides for an exception from the CVD law or from the above-stated definition of a subsidy for countries with a particular political or economic system. Rather, these provisions of international and U.S. law apply equally to all countries. As a result, the same requirements apply to both market economy and NME countries with respect to what constitutes a subsidy.

In turn, it is clear that the Chinese government can and does grant subsidies to its companies that satisfy the definition of a subsidy provided under the SCM Agreement and current U.S. law. Indeed, China is now subject to the SCM Agreement as a result of its accession to the WTO in 2001, and it has identified a number of items that clearly constitute subsidies under the SCM Agreement and, therefore, U.S. law in both its Protocol of Accession[34] and a subsequent notification to the WTO Committee on Subsidies and Countervailing Measures.[35]

In light of the dramatic change in the definition of what constitutes a subsidy, the Department's previous reliance on the belief that subsidies cannot distort

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34 See Protocol on the Accession of the People's Republic of China, WT/L/432 (Nov. 23, 2001) ("China's Accession Protocol") at Annex 5A, pp. 68-89.

35 See New and Full Notification of the People's Republic of China Pursuant to Article XVI:1 of the GATT 1994 and Article 25 of the SCM Agreement, G/SCM/N/123/CHN (Apr. 13, 2006).

markets or otherwise have economic effects in an NME country is no longer relevant. It provides no basis for declining to apply the CVD law to NME countries such as China. The new definition of what constitutes a subsidy applies to subsidies in market economy and NME countries alike, and the Department should now apply the CVD law to NME countries based on that definition.[36]

B. The Obligations Assumed by China as Part of Its Accession to the WTO Provide Still Further Grounds for the United States to Apply the CVD Law to China

As noted above, China became a Member of the WTO in 2001. Significantly, as a condition of its entry into the WTO, China agreed to adhere fully

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36 It should be noted that the Statement of Administrative Action for the URAA briefly refers to the holding in Georgetown Steel as standing for the "reasonable" proposition that the CVD law does not apply to NME countries. See Statement of Administrative Action Accompanying the Uruguay Round Agreement Act at 926 reprinted in 1994 U.S.C.C.A.N. 4040, 4240. However, while this proposition may have been reasonable under the old statute, it is no longer reasonable under the new statute and the new definition of what constitutes a subsidy. Indeed, the SAA does not even indicate that it is reasonable under the new legal framework. In addition, as described more fully in Section II.B. of these comments, China's accession to the WTO and the passage of legislation to grant China permanent normal trade relations ("PNTR") upon its accession to the WTO occurred a full seven years after the URAA was enacted. To the extent that any uncertainty or confusion remained at the time of the URAA, China's subsequent WTO accession and the PNTR legislation demonstrated, once and for all, that the CVD law should be applied to China.

to the subsidies disciplines of the SCM Agreement. In particular, Article 15(b) of China's Accession Protocol provides for the country to be subject to CVD measures immediately upon the country's accession to the WTO.[37] Article 15(b) also allows WTO Members to use non-Chinese benchmarks to measure the benefit from a subsidy where Chinese benchmarks are not available.[38] The United States itself insisted on this provision in its bilateral WTO accession agreement with China so that it could properly identify and measure the benefits from subsidies provided to Chinese companies.[39] Indeed, the United States strongly touted the benefits of this provision in stating that "when we apply our countervailing duty law to China we will be able to take the special characteristics of China's economy into account when we identify and measure any subsidy benefit that may exist."[40]

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37 See China's Accession Protocol at Art. 15(b) (providing for China to be subject to CVD measures under Part V of the SCM Agreement).

38 Id.

39 See "Bilateral WTO Deal Does Not Cover Industrial Subsidies Commitments," Inside U.S. Trade (Nov. 19, 1999), attached hereto as Exhibit 1; "Summary of U.S.-China Bilateral WTO Agreement," The White House Office of Public Liason (Nov. 17, 1999) ("White House Fact Sheet on U.S.-China Bilateral WTO Agreement") at p. 7, attached hereto as Exhibit 2.

40 White House Fact Sheet on U.S.-China Bilateral WTO Agreement at p. 7 (emphasis added), attached hereto as Exhibit 2.

Clearly, the actions of the United States and other WTO Members in negotiating disciplines for Chinese subsidies and in providing for alternative methods of quantifying such subsidies reflected their belief that subsidies can and do exist in the Chinese economy and should be subject to the disciplines of the SCM Agreement, including the CVD law. It would be fundamentally inconsistent for the United States to take the actions that it took as part of China's WTO accession process and then adhere to a policy based on the belief that subsidies cannot be found in NME countries.

Such a stance would also be flatly inconsistent with Congress' intent. In authorizing PNTR with China upon its accession to the WTO, Congress clearly intended the United States to obtain the full benefit of the obligations to which China agreed as part of its accession. In particular, in its report on the PNTR bill, the Ways and Means Committee specifically cited China's compliance with WTO rules on subsidies as a critical area to be monitored and enforced and one that would benefit U.S. firms.[41] In addition, the PNTR legislation itself that was passed by Congress authorized additional appropriations for the Department to defend "United States antidumping <u>and countervailing duty measures</u> with respect to products of the

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41 H.R. Rep. No. 106-632 (2000).

People's Republic of China."[42] Plainly, in approving PNTR for China, Congress envisioned that the CVD law would apply to Chinese imports. For the Department to decide otherwise now would violate Congress' intent.

China's acceptance of the disciplines of the SCM Agreement was a critically important element to the country's accession to the WTO for the United States and its domestic producers. The Department should strictly enforce each and every one of the obligations upon which the United States itself insisted and to which China agreed as part of that process, particularly the application of the CVD law to its imports.

III. Applying the CVD Law to China Would Not Require Any Change in the Department's Treatment of China as an NME Country for Purposes of the U.S. Antidumping Law

The application of the CVD law to China would not, in any way, conflict with or require a change in the Department's treatment of China as an NME country for purposes of the U.S. antidumping law. China's Accession Protocol allows for the application of CVD measures against China immediately upon its accession to the WTO regardless of whether the WTO Member applying the CVD measures treats China as an NME country for purposes of its antidumping law.

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42 22 U.S.C. § 6943(a)(1) (2004) (emphasis added).

Indeed, China's Accession Protocol expressly provides for WTO Members to continue to treat China as an NME country for antidumping law purposes for a period of up to 15 years from the date of the country's WTO accession.[43] This right is not limited or constrained by the application of the CVD law to China. In other words, there is no need for the Department to change China's NME status by somehow finding that it is a market economy country in order to apply the CVD law to it.

Unless and until China independently satisfies the statutory requirements to be treated as a market economy under Section 771(18)(B) of the Act,[44] the Department should continue to treat it as an NME country for purposes of the U.S. antidumping law. China's Accession Protocol provides for China both to be treated as an NME country and to have the CVD law applied to it. There is no basis to do otherwise here.

IV. The Practical Concerns Expressed Regarding the Application of the CVD Law to China Should Be Rejected

As a final matter, two practical or methodological concerns have generally been raised regarding the application of the CVD law to NME countries

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43 China's Accession Protocol at Art. 15(d).

44 See 19 U.S.C. § 1677(18)(B) (2004).

such as China by opponents of such relief. Neither of these concerns provides <u>any</u> basis for refusing to apply the CVD law to China, and each should, therefore, be rejected.

The first such practical or methodological concern is the purported lack of appropriate benchmarks to use in the identification and quantification of subsidies in China. To the extent that this is an issue in a particular case, it must be addressed under the facts and circumstances in that case. It does not justify a wholesale refusal to apply the CVD law to China. In fact, Article 15(b) of China's Accession Protocol clearly addresses any such problem by authorizing the United States to use third-country benchmarks in CVD cases involving China where Chinese benchmarks are not available.[45]

The second practical or methodological concern that has been raised is the alleged risk of double counting where concurrent antidumping and countervailing duty cases are brought against the same product from China. Once again, this is a highly fact-specific issue that must be addressed in the context of particular cases and does not justify the outright refusal to apply the CVD law to China. In fact, the

45 China's Accession Protocol at Art. 15(b).

Department itself has recognized that "there is no reason to assume that such double-counting would even exist."[46]

It is important to note that any alleged practical difficulties that may arise in the application of the CVD law are not limited to NME countries. The Department frequently encounters the same types of difficulties in CVD cases involving market economy countries. For instance, the Department has in many market economy cases experienced difficulties in determining the appropriate benchmarks to use in its analysis.[47] Just as the Department has used its expertise to

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46 GAO Report on China CVD Issue at 45 (DOC Response to Draft GAO Report).

47 See, e.g., Issues and Decision Memorandum in Certain Lined Paper Products from Indonesia, 71 Fed. Reg. 47174 (Dep't Commerce Aug. 16, 2006) (final determ.) at Comment 4.C. (using Malaysian prices as benchmark to determine whether the Government of Indonesia provided standing timber at less than adequate remuneration where Indonesian prices were distorted by government control); Issues and Decision Memorandum in Certain Hot-Rolled Carbon Steel Flat Products from India, 71 Fed. Reg. 28665 (Dep't Commerce May 17, 2006) (final results) at Section II.A.4. (using world market price to determine whether high grade iron ore was purchased at less than adequate remuneration from the government where market prices in India were unavailable); Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea, 71 Fed. Reg. 53413, 53414 (Dep't Commerce Sept. 11, 2006) (prelim. results) (using lending rates reported by the International Monetary Fund as benchmarks for government-directed loans where no other loans were available to use as benchmarks) (unchanged in final results, 72 Fed. Reg. 119 (Dep't Commerce Jan. 3, 2007) (final results)).

resolve the difficulties in those cases, the Department can do the same where they arise in cases involving NME countries. No such alleged practical difficulties warrant denying relief for an entire category of cases.

V. Conclusion

For the reasons set forth above, the Department should reconsider its policy of not applying the CVD law to NME countries like China. Indeed, based on the dramatic changes that have occurred since the Department first adopted its policy over 20 years ago, the Department should now apply the CVD law to imports from China without delay.

Respectfully submitted,

John J. Mangan

Robert E. Lighthizer
John J. Mangan
Jeffrey D. Gerrish

On behalf of United States
Steel Corporation

Exhibit 1

BILATERAL WTO DEAL DOES NOT COVER INDUSTRIAL SUBSIDIES COMMITMENTS

Date: November 19, 1999

A bilateral U.S.-China deal that paves the way for China's entry into the World Trade Organization does not deal with industrial subsidies or export subsidies, and thus leaves the issue for the multilateral negotiations on the accession protocol. Segments of the U.S. steel and textile industries have charged that China's subsidies have drastically increased in the wake of the Asian financial crisis.

The U.S. left this issue to be decided in the multilateral negotiations of the accession protocol, and believes it has a "fair degree" of support among trading partners for trying to curb them, according to one source.

The 1997 draft of the accession protocol includes a provision that China notify the WTO of its industrial subsidies including export subsidies, and then agree to phase them out.

But the bilateral agreement does deal with the issue of how to handle potential future subsidies cases, according to a senior trade official. It states that the U.S. can use methodologies alternative to that described in the WTO Agreement on Subsidies and Countervailing Measures, according to an informed source.

But the agreement does not specify what such an alternative methodology would be, and the U.S. has not yet determined hoiw it would proceed, the source said. The U.S. may have to be "creative" when finding benchmarks in subsidies case, the source said.

A reference to this methodology issue is contained in both versions of a fact sheet the Administration issued on the U.S.-China deal this week. "[W]hen we apply our countervailing duty law to China, we will be able to take the special characteristics of China's economy into account when we identify and measure any subsidy benefits that may exist," the fact sheet said.

Both versions of the fact sheet also say that the U.S. has "clarified" in protocol language the status of state-owned and state-invested enterprises under the WTO Agreement on Subsidies and Countervailing Measures in a way that allows the "effective" application of trade laws.

This wording is identical to an April 8 fact sheet handed out by the Administration when the U.S. and China came close to a deal, but informed sources said that the U.S. last week agreed to change the protocol language on state-trading enterprises, along with protocol language on seeking to limit forced technology transfer.

Administration officials have said these changes did not fundamentally change the commitments China made in April.

The state-trading protocol language also stipulates that purchases by state-owned enterprises "do not constitute 'government procurement' and are therefore subject to WTO rules," according to the Administration fact sheet. This language implies that China will not sign on to the plurilateral government procurement agreement as part of its accession.

The U.S. is retaining its current policy on subsidies cases under the bilateral agreement, according to informed sources. That policy is closely linked to the one governing antidumping cases involving Chinese exports, which allows the U.S. to account for China's non-market economy and which the bilateral agreement allows to continue for fifteen years from China's accession (*Inside U.S. Trade*, Special Report, Nov. 16).

Under current antidumping methodology, which tends to drive up antidumping duties, the U.S. does not use pricing and cost data from China, which is considered a non-market economy (NME). Instead, it uses data from a market economy country at a level of economic development comparable to China's.

But China can prove that the U.S. should apply its regular antidumping methodology in the context of individual cases if it meets the market-oriented industry (MOI) test. That test shows that market forces prevail in a given sector, which means the Commerce Dept. can use Chinese cost and price data in a given antidumping case.

If China meets the MOI test for a given industry sector in the context of an antidumping case, it could then be subject to subsidies cases, according to an informed source. At this point, the U.S. does not apply countervailing duty law to China based on the fact that it is impossible to measure the market distortions caused by subsidies in China because there is no market that can serve as a benchmark, he said.

Under the WTO Agreement on Subsidies and Countervailing Measures, a subsidies case cannot use surrogate country data but has to be based on country-specific information, according to the source. But it may be difficult in China to determine a market interest rate or to value government-provided production inputs such as electricity, he said. As a result, the U.S. insisted on the language in the bilateral agreement that allows the use of alternative methodology.

The bilateral U.S.-China agreement struck last weekend covers selected protocol issues such as the methodology for trade remedy cases in addition to market access concessions (*Inside U.S. Trade*, Special Report, Nov. 16, p. 1).

Other protocol issues need to be negotiated in a multilateral context, which will likely kick off after China has concluded respective bilateral market access deals with other trading partners, including the European Union and Canada.

The Administration has not directly addressed the issue of industrial subsidies when commenting on the deal, but has emphasized that China would agree to phase out its agricultural export subsidies.

China does not currently have agricultural export subsidies in place at this time, and the issue was raised in the negotiations largely in the context of whether China could institute them later to the levels now permitted under Uruguay Round rules.

Exhibit 2

Source: The White House Office of Public Liason
NOVEMBER 17, 1999

BRIEFING ON THE CLINTON ADMINISTRATION AGENDA FOR THE WORLD TRADE ORGANIZATION MATERIAL

SUMMARY OF U.S. - CHINA BILATERAL WTO AGREEMENT

I. AGREEMENT HIGHLIGHTS

The U.S.-China WTO agreement covers all agricultural products, all industrial goods, and all service areas.

Industrial Tariffs
China's industrial tariffs will fall from an overall average of 24.6% in 1997 to an overall average of 9.4% by 2005.

On U.S. priority industrial products, tariffs will fall to 7.1% with the majority of tariff cuts fully implemented by 2003. Tariffs will fall on a range of products including: wood, paper, chemicals, capital and medical equipment.

In information technology, tariffs on products such as computers, semiconductors, and all internet-related equipment, will fall from an average of 13.3% to 0% by 2005.

Agriculture
On U.S. priority agriculture products, tariffs will be reduced from an overall average of 31.5% to 14.5% by January 2004, at the latest.

Priority Products	Tariffs Pre-Agreement	Tariffs Post-Agreement
Beef	45	12%
Grapes	40%	13%
Wine	65%	20%
Cheese	50%	12%
Poultry	20%	10%
Pork	20%	12%
OVERALL AVERAGE	***31.5%***	***14.5%***

China will expand access for of bulk agriculture commodities, on products including corn, cotton, wheat, rice, barely, soybean oil.

China will eliminate export subsidies -- this is especially critical for U.S. cotton and rice producers.

China will for the first time ever permit private trade (trade between private parties) in agriculture.

Services
On industrial goods, China will for the first time permit the right to import and export without middle-men -- so-called trading rights -- as well as full rights of distribution including wholesale and retail and aftersale service, repair, maintenance, and transport.

The telecommunications, insurance, banking, securities, audio visual, and professional service sectors, to name a few, will all have expanded market access under the agreement.

II. RESOLUTION OF KEY UNRESOLVED ISSUES

- Import Surge Mechanism. China has agreed to a special safeguard mechanism that will remain in place for 12 years following accession and that can be used to address rapid increases in imports from China that cause or threaten market disruption.

- Anti-Dumping. The agreement ensures that the United States can continue to apply our current non-market economy methodology in antidumping cases involving imports from China for 15 years. China can, of course, request review under U.S. law of specific sectors or the economy as a whole to determine if it is market oriented and no longer subject to the special methodology.

- Motion Pictures. A previously unresolved issue had been the degree to which China restricted imports of films. Prior to the agreement, China permitted a maximum of 10 foreign films. Under the agreement, China will quadruple imports to 40 films after accession, growing to 50 films in three Years, of which 20 will be on a revenue-sharing basis, in each of the three Years.

- Internet Access. Because of the enormous projected growth in internet access in China over the coming decade, a key priority of the U.S. was to ensure that China's telecom service commitment clearly included all aspects of internet service. The agreement ensures that Internet services will be liberalized at the same rate as other key telecommunications services.

- Satellites. China has clarified that it will permit provision of telecommunications services via satellite.

- Auto Financing. China has now made commitments for non-bank foreign financial institutions to be able to provide auto financing upon China's accession. This in combination with commitments regarding importation, distribution, sale, financing, and maintenance and repair of automobiles will help open up this key sector for U.S. industry.

- Accelerated Auto Tariff Reduction. As part of the efforts to find "win-win" solutions to sensitive areas, China agreed to accelerated tariff reduction in exchange for a slightly longer phase-in period. This provides earlier market access with auto tariffs still being reduced from the current 100-80 percent to 25 percent by July 1, 2006.

- Telecommunications. While the United States agreed to China's request to limit foreign equity participation in value-added and paging services to 50 percent, China agreed to both accelerate significantly the percentage of equity participation in the first two years and eliminate geographic restrictions on an accelerated basis. China had indicated it would allow 35% foreign ownership for value-added and paging services two years after accession and 51% four years after accession. China will now allow 49% foreign ownership in the first year of accession and 50% foreign ownership in the second year.

- Life Insurance. While the United States agreed to China's request to limit foreign equity participation in life insurance to 50%, China agreed to significantly accelerate the elimination of geographic restrictions the percentage of equity participation in the first few years.

SUMMARY OF U.S. - CHINA BILATERAL WTO AGREEMENT

AGRICULTURE

The Agreement provides increased access for U.S. exports across a broad range of commodities and elimination of barriers. Commitments include:

- Significant cuts in tariffs that will be completed by January 2004. Overall average for agricultural products will be 17 percent and for U.S. priority products 14.5 percent.

- Establishment of a tariff-rate quota system for imports of bulk commodities, e.g., wheat, corn, cotton, barley, and rice, that provides a share of the TRQ for private traders. Specific rules on how the TRQ will operate and increased transparency in the process will help ensure that imports occur. Significant and growing quota quantities subject to tariffs that average between 1-3 percent.

- The right to import and distribute products without going through state-trading enterprise or middle-man.

- China has also agreed to the elimination of SPS barriers that are not based on scientific evidence and no export subsidies on agricultural products.

INDUSTRIAL PRODUCTS

China's commitments will eliminate broad systemic barriers to U.S. exports, such as limits on who can import goods and distribute them in China as well as barriers such as quotas and licenses that restrict imports of U.S. products.

TARIFFS

- Tariffs cut to an average of 9.4 percent overall and 7.1 percent on U.S. priority products.

- China will participate in the Information Technology Agreement (ITA) eliminating all tariffs on products such as computers, telecommunications equipment, semiconductors, computer equipment and other high technology products.

- In the auto sector, China will cut tariffs from the current 100% or 80% level to 25% by 2006, with the largest cuts in the first years after accession.

- Auto parts tariffs will be cut to an average of 10% by 2006.

- Significant cuts will also be made in the wood and paper sectors, going from present levels of 12-18% on wood and 15-25% on paper down to levels generally between 5 and 7.5%.

- China will also be implementing the vast majority of the chemical harmonization initiative. Under that initiative, tariffs will be at 0, 5.5 and 6.5 percent for products in each category.

ELIMINATION OF QUOTAS AND LICENSES

WTO rules bar quotas and other quantitative restrictions. China has agreed to eliminate these restrictions with phase-ins limited to five years.

- Quotas: China will eliminate existing quotas upon accession for the top U.S. priorities (e.g. optic fiber cable). It will phase-out remaining quotas, generally by 2002, but no later than 2005.

- Quotas will grow from current trade level at a 15% annual rate in order to ensure that market access increases progressively, and reduces the effect of quantitative restrictions.

- Auto quotas will be phased out by 2005. In the interim, the base level quota will be $6 billion (the level prior to China's industrial auto policy) and this will grow by 15% annually until elimination.

RIGHT TO IMPORT AND DISTRIBUTE

Trading rights and distribution are the major priority of the manufacturing sector. At present, China severely restricts trading rights (the right to import and export) and distribution (wholesaling, retailing, maintenance and repair, transportation, etc.). Under the Agreement, China will provide, for the first time, trading rights and distribution rights to U.S. firms. Trading rights will be progressively phased in over three years. Distribution rights will be provided even for China's most restricted distribution sectors such as wholesale, transportation, maintenance and repair. China will provide for trading rights and distribution.

SERVICES

China has made commitments in all major service categories with reasonable transitions to eliminate most foreign equity restrictions (especially in sectors where the U.S. has a strong commercial interest), agreeing to accede to the Basic Telecommunications and Financial Services Agreements, and "grandfathering" of current market access for U.S. service providers.

GRANDFATHERING

China will grandfather all existing current market access and activities in all services sectors. This will protect existing American distribution services, financial services, professional and other service providers in China, including those operating under contractual or shareholder agreements or a license, from restrictions as Chinese commitments phase in.

DISTRIBUTION

In China today, foreign firms have no right to distribute products other than those they make in China, or to own or manage distribution networks, wholesaling outlets or warehouses. China also now frequently issues businesses licenses which limit the ability of American firms to conduct marketing, after-sales service, maintenance and repair and customer support. As the section on industrial goods noted, this is a severe barrier to goods exports as well as to service exports.

China's commitments address all these issues. They reflect a comprehensive commitment on distribution - including wholesaling, sales away from a fixed location, retailing, maintenance and repair, and transportation. Thus, Americans will be able to distribute imported products as well as those made in China, offering significant opportunity to expand U.S. exports of goods. As noted above, China will phase out all restrictions on distribution services for most products within three years.

SERVICES AUXILIARY TO DISTRIBUTION

Chinese commitments in services auxiliary to distribution include rental and leasing, air courier, freight forwarding, storage and warehousing, advertising, technical testing and analysis, and packaging services. All restrictions will be phased-out in 3 to 4 years, at which time U.S. service suppliers will be able to establish 100% wholly-owned subsidiaries.

TELECOMMUNICATIONS

China now severely restricts sales of telecommunications services and bars foreign investment. China's commitments mark its first agreement to open its telecommunications sector, both to the scope of services and to direct investment in telecommunications businesses. Through these commitments, China will become a member of the Basic Telecommunications Agreement.

Specific commitments include:

- Regulatory Principles: China has agreed to implement the pro-competitive regulatory principles embodied in the Basic Telecommunications Agreement (including cost-based pricing, interconnection rights and independent regulatory authority), and agreed to technology-neutral scheduling, which means foreign suppliers can use any technology they choose to provide telecommunications services.

- Scope of services: China will phase out all geographic restrictions for paging and value-added services in 2 years, mobile/cellular in 5 years and domestic wireline services in 6 years. China's key telecommunications services corridor in Beijing, Shanghai, and Guangzhou, which represents approximately 75% of all domestic traffic, will open immediately on accession in all telecommunications services.

- Investment: Under present circumstances, China allows no foreign investment in telecommunications services. With this agreement, China will allow 49% foreign investment in all services, and will allow 50% foreign ownership for value added paging services in two years, for mobile services, 49 percent in 5 years; and for inernational and domestic services, 49% in 6 years.

INSURANCE

For insurance, China now restricts foreign companies to operating in Shanghai and Guangzhou. Under the agreement:

- Geographic Limitations: China will permit foreign property and casualty firms to insure large-scale risks nationwide immediately upon accession, and will eliminate all geographic limitations IN 3 YEARS.

- Scope: China will expand the scope of activities for foreign insurers to include group, health and pension lines of insurance, which represent about 85% of total premiums, phased in over 5 years.

- Prudential Criteria: China agrees to award licenses solely on the basis of prudential criteria, with no economic needs test or quantitative limits on the number of licenses issued.

- Investment: China agreed to allow 50 percent ownership for life insurance. life insurers may now choose their own joint venture partners. for non-life, china will allow branching or 51% ownership on accession and form wholly owned subsidiaries in 2 years. reinsurance is completely open upon accession (100 percent, no restrictions).

BANKING

Currently foreign banks are not permitted to do local currency business with Chinese clients (a few can engage in local currency business with their foreign clients). China imposes severe geographic restrictions on the establishment of foreign banks.

- China has committed to full market access in five years for U.S. banks.

- Foreign banks will be able to conduct local currency business with Chinese enterprises starting 2 years after accession.

- Foreign banks will be able to conduct local currency business with Chinese individuals from 5 years after accession.

- Foreign banks will have the same rights (national treatment) as Chinese banks within designated geographic areas.

- Both geographic and customer restrictions will be removed in five years

- Non-bank financial companies can offer auto financing upon accession

SECURITIES

China will permit minority foreign owned joint ventures to engage in fund management on the same terms as Chinese firms. As the scope of business expands for Chinese firms, foreign joint venture securities companies will enjoy the same expansion in scope of business. Minority joint ventures will be allowed to underwrite domestic securities issues and underwrite and trade in foreign currency denominated securities (debt and equity).

PROFESSIONAL SERVICES

In the professional services, China currently tightly restricts operation of foreign law firms and accounting firms. In the Agreement, China has provided a broad range of commitments, including on legal, accountancy, taxation, management consultancy, architecture, engineering, urban planning, medical and dental, and computer and related services. China will permit foreign majority control except for practicing Chinese law (an exception common to many WTO members.) For accountancy, China has agreed to eliminate a mandatory localization requirement and will now allow unrestricted access to its market to professionals licensed and follow transparent procedures.

AUDIOVISUAL

China's commitments cover the right to distribute video and sound recordings and cinema ownership and operation. For video and sound recordings, China will allow 49% foreign participation in joint ventures engaged in the distribution of these products. China has also agreed to import 40 films after accession growing to 50 films in three years, of which 20 films will be revenue sharing in each of the three years.

TRAVEL AND TOURISM

Hotels: China will allow unrestricted access to the Chinese market for hotel operators with the ability to set up 100% foreign owned hotels in 3 years, with majority ownership allowed upon accession.

Travel Services: Foreign travel operators can provide the full range of travel agency services. For travel agency services, China will allow access to government resorts as well as Beijing, Shanghai, Guangzhou and Xian.

PROTOCOL PROVISIONS

Commitments in China's WTO Protocol and Working Party Report establish rights and obligations enforceable through WTO dispute settlement procedures. We have agreed on key provisions relating to antidumping and subsidies, protection against import surges, technology transfer requirements and offsets as well as practices of state-owned and state-invested enterprises. These rules are of special importance to U.S. workers and business.

China had agreed to implement the TRIMs Agreement upon accession, eliminate and cease enforcing trade and foreign exchange balancing requirements, eliminate and cease enforcing local content requirements, refuse to enforce contracts imposing these requirements; and only impose or enforce laws or other provisions relating to the transfer of technology or other know-how, if they are in accordance with the WTO agreements on protection of intellectual property rights and trade-related investment measures.

These provisions will also help protect American firms against forced technology transfers, as China has also agreed that, upon accession, it will not condition investment approvals, import licenses, or any other import approval process on performance requirements of any kind, including: local content requirements, offsets, transfer of technology, or requirements to conduct research and development in China.

ANTIDUMPING AND SUBSIDIES METHODOLOGY

The agreed protocol provisions ensure that American firms and workers will have strong protection against unfair trade practices including dumping and subsidies. The U.S. and China have agreed that we will be able to maintain our current antidumping methodology (treating China as a non-market economy) in future anti-dumping cases. this provision will remain in force for 15 years after china's accession to the WTO. Moreover, when we apply our countervailing duty law to China we will be able to take the special characteristics of China's economy into account when we identify and measure any subsidy benefit that may exist.

PRODUCT SPECIFIC SAFEGUARD

The agreed provisions for the protocol package also ensure that American domestic firms AND WORKERS will have strong protection against rapid increases of imports.

To do this, the Product-Specific Safeguard provision sets up a special mechanism to address increased imports that cause or threaten to cause market disruption to a U.S. industry. China is a major exporting country that enjoys open access to U.S. markets. This mechanism, which is in addition to other WTO Safeguards provisions, differs from traditional safeguards measures. It permits United States to address imports solely from China , rather than from the whole world, that are a significant cause of material injury through measures such as import restrictions. Moreover, the United States will be able to apply restraints unilaterally based on legal standards that differ from those in the WTO Safeguards Agreement and could permit action in more cases. This provision will remain in force for 12 years after China accedes to the WTO.

STATE-OWNED AND STATE-INVESTED ENTERPRISES

The Protocol addresses important issues related to the Chinese government's involvement in the economy. China has agreed that it will ensure that state-owned and state-invested enterprises will make purchases and sales based solely on commercial considerations, such as price, quality, availability and marketability, provide U.S. firms with the opportunity to compete for sales and purchases on non-discriminatory terms and conditions.

China has also agreed that it will not influence these commercial decisions (either directly or indirectly) except in a WTO consistent manner. With respect to applying WTO rules to state-owned and state-invested enterprises, we have clarified in several ways that these firms are subject to WTO disciplines.

-Purchases of goods or services by these state-owned and state-invested enterprises do not constitute "government procurement" and thus are subject to WTO rules.

-We have clarified the status of state-owned and state-invested enterprises under the WTO Agreement on Subsidies and Countervailing Measures. This will help ensure that we can effectively apply our trade law to these enterprises when it is appropriate to do so.

TEXTILES

China's protocol package will include a provision drawn from our 1997 bilateral textiles agreement, which permits U.S. companies and workers to respond to increased imports of textile and apparel products. This textile safeguard will be in effect until December 31, 2008 which is after the WTO Agreement on Textiles and Clothing expires.